**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE J.B.KOSHY**
**&**
**THE HONOURABLE MR. JUSTICE K.T.SANKARAN**

**MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929**

**MFA.No. 981 of 2001(D)**
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**OPMV.1546/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA**
**.....**

**APPELLANT/PETITIONER**
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**YOHANNAN @ JOY S/O. VARGHESE,**
**AGED 42 YRS, RESIDING AT**
**KEEDAMKANDATHIL HOUSE,**
**PINDIMANA KARA, PINDIMANA VILLAGE.**

**BY ADV. SRI.K.JAJU BABU**

**RESPONDENTS/RESPONDENTS**
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1. **BABY MATHEW, S/O. MATHACHAN,**
   **CHERAYIL HOUSE, BHOOTHATHANKETTU,**
   **KOTHAMANGALAM.**

2. **MADHAVAN, S/O. VALLOCHERI, POKKATTU**
   **HOUSE, PINDIMANA KARA, PINDIMANA VILLAGE,**
   **MALIPPARA P.O.**

3. **THE ORIENTAL INSURANCE CO. LTD.,**
   **KOTHAMANGALAM.**

**BY ADV. SRI.M.JACOB MURICKAN --- R3**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 03/12/2007**
**THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**J.B.KOSHY & K.T.SANKARAN, JJ.**

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**M.F.A.NO.981 OF 2001 (D)**

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**Dated this the 3rd day of December, 2007**

**J U D G M E N T**

**KOSHY,J.**

Appellant claimant met with an accident on 7.5.1998 and as a result of which, he suffered serious injuries including fracture of right fibula and tibia. He was a coolie worker. He claimed an amount of Rs.2,00,000/- as compensation. Tribunal granted only Rs.65,000/- including all expenses. Only quantum of compensation is disputed in this appeal.

2. Ext.A4 wound certificate shows the following injuries:

> (i) deep lacerated wound 3 cms. above the right knee.
>
> (ii) lacerated wound 4 cms. above the right knee.
>
> (iii) deep lacerated wound about 15 cms. long, medial aspect of leg right, calf muscles exposed and lacerated.

(iv) lacerated wound above 15 cms. long lower 3rd right leg, muscles exposed, achiles tendon exposed.

(v) compound fracture both bones lower 3rd right leg grossly contaminated.

(vi) deep lacerated wound medial aspect of foot 2nd metatarsal exposed.

(vii) lacerated wound lateral aspect right heel-bone deep 6 x 3 cms.

Ext.A5 shows that he was treated as inpatient for 58 days and open reduction surgery was conducted. Ext.A7 disability certificate shows that he was having 12% disability. There was 1 cm shortening of right lower limb below knee level as fracture was united with angulation. But tribunal has taken only 7% disability. Considering the nature of injuries, we are of the opinion that no interference is required. Tribunal only fixed Rs.1,500/- as the monthly income. He was aged 39 years and accident happened on 7.5.1998. Even an unskilled worker in Kerala will get more than Rs.100/- per day. He was maintaining a family. We are of the opinion that Rs.2,500/- as claimed by the petitioner ought have been taken as monthly income.

Taking guidelines from the 2nd Schedule, tribunal has taken 16 as the multiplier. There is no need to change the same. If that be so, compensation will be Rs.2,500 x 12 x 16 x $^{7}/_{100}$ =Rs.33,600/-. Tribunal has granted Rs.20,200/- towards loss of earning power. Tribunal has found that in view of the treatment for six months he was not able to do any manual work under treatment. Since we have increased the monthly income by Rs.1,000/- per month, he will be entitled to Rs.6,000/- for loss of actual earning during the treatment period. Therefore additional compensation claimant will be entitled to is Rs.19,400/-. The above amount should be deposited by the 3rd respondent Insurance company with 7.5% interest from the date of application till its deposit over and above the decreed amount by the tribunal and on deposit of the amount appellant is allowed to withdraw the same. With the above observations this appeal is allowed.

**J.B.KOSHY, JUDGE**

**K.T.SANKARAN, JUDGE**

prp

**J.B.KOSHY & K.T.SANKARAN, JJ.**

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**M.F.A.NO.981 OF 2001 ()**

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**J U D G M E N T**

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**3rd December, 2007**